IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 29240 of 2006(E)

PETITIONER:
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1. P.V.VARGHESE,
   AGED 51 YEARS, S/O.P.V.VARKEY,
   PAREKKATTIL, HOUSE NO.2, K.T.JACOB NAGAR,
   MUVATTUPUZHA.

2. SRI.YACOB K.P.,
   KATHICHIRAYIL HOUSE, KADACKANAD P.O.,
   KOLENCHERRY.

3. SRI.C.M.GEORGE,
   CHIRAMUKOTHU,
   KOIPURAM P.O., THIRUVALLA.

4. SRI.V.K.MATHAI,
   VELLANJI HOUSE,
   PLAMUDY P.O., KOTHAMANGALAM.

BY ADV. SMT.JEENA JOSEPH
SRI.G.D.PANICKER

RESPONDENTS:
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1. SUB REGISTRAR,
   MUVATTUPUZHA.

2. RECOVERY OFFICER,
   DEBT RECOVERY TRIBUNAL,
   ERNAKULAM.

BY G.P. SMT. SMITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1,P2, P3 & P4: TRUE PHOTOCOPIES OF THE SALE CERTIFICATES ISSUED BY THE 2ND RESPONDENT DATED 14.6.2006, 5/7/2006 RESPECTIVELY.

EXT.P5(a), P5(b), P5(c), P5(d): TRUE PHOTOCOPIES OF THE FORWARDING LETTER ISSUED BY THE 2ND RESPONDENT TO THE FIRST RESPONDENT DATED 14.6.2006 AND 5.7.2007 RESPECTIVELY.

EXT.P6 TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE FIRST RESPONDENT ON 17.10.2006

EXT.P7 TRUE PHOTOCOPY OF THE JUDGMENT DATED 23.6.2006 IN WRIT APPEAL NO. 1086 OF 2006 OF THE DIVISION BENCH OF THE HONOURABLE HIGH COURT OF KERALA.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 29240 OF 2006

Dated this the 27th day of February, 2007

JUDGMENT

CR

Petitioner is challenging Ext.P6 issued by the Sub Registrar, Muvattupuzha, demanding stamp duty for filing sale certificate issued by the second respondent under Section 89(4) of the Registration Act, 1908. Petitioner has relied on a Division Bench decision of this Court in W.A.No. 1086 of 2006 dated 23.6.2006 produced as Ext.P7, wherein the Division Bench has held that the Sub Registrar is bound to file the sale certificate issued by the sale officer in Book No. 1 under Section 89(4) of the Registration Act 1908, as it is not a document compulsorily registrable. The judgment of the Division Bench was in fact rendered based on the decision of the Supreme Court in SHANTI DEVI L. SINGH V. TAX RECOVERY OFFICER, (1990) 3 SCC 605. On going through the judgment of the Division Bench I find the question of stamp duty payable on the sale certificate issued under the Kerala Stamp Act, 1959 was not considered by the Division Bench. The Supreme Court has left open the question of stamp duty and all what is decided is that no registration is required for filing sale certificate under Section 89(4) of the Registration Act.

2. The sale certificate granted to the purchaser for any property sold by public auction by a Civil or Revenue Court or by the Government, Collector or other Revenue Officer attracts stamp duty under Article 16 of the Schedule to the Kerala Stamp Act at the same rate as on a conveyance. Section 30(e) of the Kerala Stamp Act provides as follows:

> 30. **Duties by whom payable.-** In the absence of an agreement to the contrary the expense of providing the proper stamp shall be borne,-
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>
> (e) in the case of a certificate of sale - by the purchaser of the property to which such certificate relates;..
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> ----------"

The procedure for sale of property by a Recovery Officer under the Recovery of Debts due to Banks & Financial Institutions Act, 1993 is the same as provided under Rule 65 of the Second Schedule to the Income-tax Act, 1961 and Rule 21 of the Income Tax (Certificate Proceedings) Rules, 1962. The certificate of sale issued by the sale officer is covered by Article 16 of the Schedule to the Kerala Stamp

Act and therefore it should be issued on the stamp paper of the value referred to in the said Act. By virtue of Section 30(e) of the Kerala Stamp Act the liability to pay stamp duty for the sale certificate to be issued by the Recovery Officer is on the purchaser of the property. Therefore purchasers are bound to furnish stamp paper for the value in terms of Art. 16 of the Schedule to the Stamp Act and sale certificate should have been issued by the Recovery Officer on such stamp paper. The first respondent therefore rightly demanded stamp duty on the certificate issued by the second respondent for filing it in book No. 1 referred to under Section 89(4) of the Registration Act. Petitioner is therefore directed to produce stamp paper applicable to conveyance before the second respondent for issuing fresh certificate and there will be direction to the first respondent to register such certificate issued on sufficient stamp paper without collection of any registration fee as filing it in book No. 1 under Section 89(4) of the Registration Act does not amount to registration.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge